

**AGREEMENT BETWEEN
CITY OF SUNNYVALE AND SUNNYVALE POP WARNER FOOTBALL**

THIS AGREEMENT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and SUNNYVALE POP WARNER FOOTBALL ("GROUP"), a non-profit organization.

WHEREAS the CITY desires to support independent organizations providing services beneficial to the Community; and

WHEREAS GROUP wishes to provide non-profit services to Sunnyvale youth not otherwise offered or duplicated by the City of Sunnyvale; and

WHEREAS GROUP wishes to use various sports fields and facilities maintained by the City of Sunnyvale for that purpose on a priority basis; and at a cost reduced from that dictated by established CITY facility rental rates, and;

NOW THEREFORE, in accordance with the CITY's Relationships with Outside Groups Policy, the CITY OF SUNNYVALE and SUNNYVALE POP WARNER FOOTBALL enter into this agreement.

1. Obligations of CITY OF SUNNYVALE

CITY shall provide GROUP first priority reservation, after CITY scheduled activities and consistent with CITY policy on facility use, of athletic fields and park buildings from August 1 through December 15 each year, including but not limited to, those at Washington Park, Fair Oaks Park and Ortega Park only for the purpose of regular season meetings, practices, games and associated activities.

CITY shall make priority reservations for the athletic fields and park buildings by July 1 of the prior year based upon the GROUP previous year's permits and notify the GROUP of their availability. Any changes in the availability of the facilities compared to the prior year will be noted by CITY and shared with GROUP. Any reservation for a facility that is not needed by GROUP will be released and made available for public use.

CITY shall provide the use of the reserved picnic area at Fair Oaks Park for 2 days in each calendar year for the purpose of GROUP opening and closing day celebrations.

CITY shall charge GROUP for the current season's permits by September 1 of each year.

CITY shall facilitate a meeting with GROUP and all other Summer/Fall season youth sports groups each July for the purpose of distributing the initial permits for the upcoming season and discussing topics relevant to the CITY's and GROUP's associated activities.

CITY shall list GROUP contact information in the Department of Parks and Recreation Activity Guide.

CITY shall provide an annual training session to GROUP, in combination with other youth sports leagues, regarding the proper care and maintenance of athletic facilities.

CITY shall provide GROUP up to 6 keys to each of the facilities that they have reserved.

CITY shall allow GROUP to place their own storage container one week before starting date and remove it the week following the ending date of each season at Fair Oaks Park (320 square feet). City shall approve the location of the container.

CITY shall notify GROUP if permitted facilities are or will need to be closed for any reason during the season, and attempt to accommodate GROUP provided that alternate facilities are available.

2. Obligations of SUNNYVALE POP WARNER FOOTBALL

GROUP shall provide all activities and programs associated with the planning, organizing, scheduling and hosting of GROUP's football and cheerleading games, practices and associated activities, at no cost to the City.

GROUP shall comply with all CITY rental use policies and provide facility maintenance in accordance with the Sunnyvale Department of Parks and Recreation's Athletic Facility Use Guide.

GROUP shall have the coordinator of each of its divisions/levels and the President and Vice-President in attendance at the annual athletic field maintenance training day conducted by the CITY.

GROUP shall leave all facilities used in the same or better condition than they were found on a daily use basis and shall not use facilities that are designated as "Closed" by the CITY.

GROUP shall make all special requests in writing to CITY, including but not limited to, requests for additional storage space, improvements or modifications of any kind to CITY facilities and the placement of banners advertising GROUP's activities.

GROUP shall provide written notice to CITY by September 1, of the release of any permitted athletic field time or to request additional permitted athletic field time. Permits that are not cancelled according to CITY reservation policies will be subject to payment.

GROUP shall provide rental fees for the use of athletic fields in accordance to established fee schedules but not to exceed one dollar (\$1) per hour per field and two dollars (\$2) per hour per field when using lights and (\$1) per hour per park building for cheerleading practices only. No rental fee shall be required for use of a picnic area two days each year.

GROUP shall provide payment to the CITY within three weeks of receipt of the invoice. Fees paid for facilities not used due to conditions beyond their control shall be credited towards fees owed in the following year. Reservations made during a season and after payment of the invoice will be added to next season's invoice. GROUP shall provide rental fees for the use of all facilities outside of this agreement according to the CITY's Facility Rental Rate Schedule and shall be made directly with reservation staff at the time the reservation is made.

GROUP shall be responsible for storage, care, custody or control of equipment, materials or furnishings owned by GROUP.

GROUP shall repair, replace or pay for damage to City facilities or equipment furnished by CITY, at the discretion of the CITY, if damage occurred during use by GROUP.

GROUP shall provide proof of non-profit status, and shall remain non-profit during the life of this agreement.

GROUP shall maintain a membership of at least 51% Sunnyvale residents for both players and Board of Directors. GROUP shall provide CITY with a roster, noting the residency of every player and board member, each year no later than September 1 of each year. A request for a special exception to this requirement must be submitted in writing to CITY for approval if Sunnyvale residency of membership is below 51%.

GROUP shall reimburse cost to CITY to replace keys and re-key facilities under the use of GROUP, when necessary for security purposes.

3. Conflicts of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement SUNNYVALE POP WARNER FOOTBALL shall not accept employment or an obligation which is inconsistent or incompatible with GROUP obligations under this Agreement.

4. Compliance with Laws

a) SUNNYVALE POP WARNER FOOTBALL shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, gender, age (persons 40 years of age or older), disability, national origin, or any other basis to the extent prohibited by federal, state or local law.

b) SUNNYVALE POP WARNER FOOTBALL shall comply with all federal, state, county and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting performance of the Agreement.

5. Indemnity

SUNNYVALE POP WARNER FOOTBALL agrees to indemnify, defend and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of GROUP, its officers, employees, agents, SUNNYVALE POP WARNER FOOTBALL sub groups or any officer, agent or employee thereof in relation to GROUP's performance under this Agreement.

6. Insurance

SUNNYVALE POP WARNER FOOTBALL shall, at own cost, take out and maintain without interruption during the life of this Agreement in such form and with a company or companies satisfactory to the CITY policies of the following types of insurance:

(a) Combined single limit coverage applying to bodily and personal injury liability, including liability for death, and property damage, or a combination thereof, in an amount not less than One Million Dollars (\$1,000,000) providing coverage on an "occurrence" basis and not an "accident" basis; provided, however, as follows:

- (1) CITY shall be named as an additional insured in all insurance policies;
- (2) A contractual liability endorsement shall be included in each insurance policy, extending coverage to include liability assumed under paragraph 5 above; and,

(b) Worker's compensation insurance and employer's liability insurance for all employees of Licensee.

7. CITY OF SUNNYVALE Representative

The Director of Sunnyvale Parks and Recreation, or such other person as he/ she may be designate shall represent CITY as the City Manager's authorized representative in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

8. SUNNYVALE POP WARNER FOOTBALL Representative

The President of GROUP shall represent GROUP in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of GROUP pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the GROUP representative.

9. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY: City Manager
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707
(408) 730-7480

To GROUP: Dolf Placencia, President
SUNNYVALE POP WARNER FOOTBALL
522 Dawn Avenue
Sunnyvale, CA 94087
(408) 737-9972

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation or a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

10. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

11. Duration of Agreement

This Agreement shall continue until such time as terminated in accordance with section 12 below.

12. Termination

(a) If SUNNYVALE POP WARNER FOOTBALL defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to GROUP.

(b) Without limitation to such rights or remedies as CITY shall otherwise have by law, either party shall have the right to terminate this Agreement for any reason upon ninety (90) days' written notice to the other party. If CITY terminates the Agreement; CITY shall reimburse GROUP for its expenses directly related to facility fees that were paid by GROUP for use that has not yet occurred. If GROUP terminates the Agreement; CITY shall reimburse GROUP for its expenses directly related to facility fees that were paid by GROUP for use that has not yet occurred, according to the CITY facility reservation cancellation policy in effect at the time of termination.

13. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

14. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

City Clerk

By _____
City Manager Date

APPROVED AS TO FORM:

SUNNYVALE POP WARNER FOOTBALL
("GROUP")

City Attorney

By Dolf Placencia 9/3/04
Dolf Placencia Date
President